IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 30 OF 2004.

Mr. Sameer Carvalho,
presently residing at
H. No. 1812, Gaumvaddi,
Anjuna, Bardez, Goa. .... Applicant.

Versus

State of Goa,
as represented by
Officer-in-charge,
ANC Police Station,
Panaji, Goa. .... Respondent.

Mr. J.P. De Souza with Ms. C. Collasso, Advocates for the Applicant.

Ms. W. Coutinho, Additional Public Prosecutor for the Respondent.

CORAM: N. A. BRITTO, J.

DATE: 10th February, 2005.

ORAL ORDER:

Heard Ms. Collasso, the learned counsel for the Applicant/accused and Ms. Coutinho, the learned Addl. P.P.

2. This revision petition is directed against the Order dated 11.10.04 of the learned Special Judge of N.D.P.S. Court, Mapusa by which the learned

Special Judge has in substance turned down the prayer of the Applicant/Accused for refund of Rs.75,000/- and instead has directed that the Applicant/Accused approach the State Government for refund of the said amount.

3. There is no dispute that the accused was sentenced in Special Criminal Case No.5/1994 to undergo 10 years rigorous imprisonment and fine of Rs. 1 lakh and, in default, to undergo R.I. for one year. The said substantive period of imprisonment was deemed to have commenced on 12.11.93 and as submitted by Ms. Collasso and not disputed by Addl. P.P., the said substantive period of imprisonment came to an end on 12.11.03. Thereafter the accused underwent a further period of imprisonment of 9 months and 5 days, and, on 17.8.04 while the accused was on parole, the accused filed an application tendering the entire amount of Rs. 1 lakh which was accepted by the learned Special Judge, whereupon the learned Special Judge directed the jailor to release the accused since the accused has tendered the sum of Rs. 1 lakh being the fine ordered to be paid.

4. The learned Advocate Ms. Collasso submits that as the said accused was on parole and did not want to go back to jail, the entire amount was tendered although the accused had undergone imprisonment in default for a period of nine months and five days. It is her submission therefore that

the State was liable to refund an amount of Rs.75,000/- being the amount for which the accused had already undergone 9 months of imprisonment. The amount claimed by the accused for the said 9 months only has not been disputed. It appears that the learned Special Judge in principle had no objection that the said amount should not be refunded. It is the submission of the learned Addl. P.P. Ms. Coutinho that the learned Special Judge be directed to calculate the amount due to the accused and refund the balance.

5. In my view there is no necessity of remanding the case to the learned Special Judge. The accused has claimed only an amount of Rs. 75,000/- which amount the accused had to pay in case he had not undergone 9 months imprisonment in default of payment of fine. Since the entire amount was accepted by the learned Special Judge without any calculations being made and in excess of the amount which the accused was liable and required to pay as on that date, in my opinion, the learned Special Judge ought to have refunded the balance amount.

6. It is to be noted that it is the learned Special Judge who had collected the excess amount from the accused and after having shown that the accused was not liable to pay the entire amount, the learned Special Judge ought to have refunded the balance amount. The learned Special Judge

was not helpless and ought to have followed the principle " ubi jus ibi remedium " (where there is a right, there is a remedy). Section 68 of I.P.C. provides that the imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law. Section 69 of the said Code further provides that if, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate. Illustration below S.69 I.P.C. reads as follows :-

" A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged. "

7. In the light of the above explanation, as on the date the said deposit was made by the accused of Rs. 1 lakh, the accused was not required to deposit more than Rs.25,000/-. Having accepted the amount in excess, either paid inadvertently or due to mistake, the same ought to have been refunded to the accused. The State could not be allowed to enrich unjustly at the cost of prisoners. Therefore the balance amount of Rs.75,000/- paid in excess by the accused ought to have been refunded to him.

8. In view of the above, the revision deserves to succeed. The Order dated 11.10.2004 of the learned Special Judge, Mapusa is hereby set aside and the learned Special Judge, Mapusa is hereby directed to refund the balance amount of Rs.75,000/- to the said accused.

N.A. BRITTO, J.

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